STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:	)	
	)	
ROSALIND R. GIBBS,	)	
	)	**Charge No. 2006SP0066**
Complainant,	)	**EEOC No. N/A**
	)	**ALS No. S07-041**
and	)	
	)	
CLARE'S BEAUTY SUPPLY,	)	
	)	
Respondent.	)	

ORDER

This matter coming before the Commission pursuant to a Recommended Order and Decision, the Complainant's Exceptions filed thereto. The Respondent did not file a Response to the Complainant's Exceptions.

The Illinois Department of Human Rights is an additional statutory party that has conducted state action in this matter. They are named herein as an additional party of record. The Illinois Department of Human Rights did not participate in the Commission's consideration of this matter.

IT IS HEREBY ORDERED:

1. Pursuant to 775 ILCS 5/8A-103(E)(1) & (3), the Commission has **DECLINED** further review in the above-captioned matter. The parties are hereby notified that the Administrative Law Judge's Recommended Order and Decision, entered on **January 8, 2010**, has become the Order of the Commission.

STATE OF ILLINOIS)
) **Entered this 14th day of April 2010**
HUMAN RIGHTS COMMISSION)

Commissioner David Chang

Commissioner Marylee V. Freeman

Commissioner Charles E. Box

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:		
ROSALIND R. GIBBS,		
Complainant,		
and	CHARGE NO:	2006SP0066
	EEOC NO:	N/A
CLARE'S BEAUTY SUPPLY,	ALS NO:	S07-041
Respondent.		

RECOMMENDED ORDER AND DECISION

This matter is ready for a Recommended Order and Decision pursuant to the Illinois Human Rights Act (775 ILCS 5/1-101 et seq.). On October 23, 2007 a hearing was held before me in Springfield, Illinois. Complainant has filed a post-hearing brief; Respondent has not filed a post-hearing brief, although the time for doing so has expired. Accordingly, this matter is ready for a decision.

Contentions of the Parties

In the instant Complaint, Complaint contends that she was treated rudely and ordered to leave Respondent's store on two occasions because of her race and gender. Respondent submits that Complainant was asked to leave its store on the first occasion because the store was in the process of being closed due to a perceived family medical emergency. As to the second occasion, Respondent maintains that it did not preclude Complainant from shopping in its store on account of her race or gender and explains that Complainant was ordered to leave its store only after she had made derogative comments to Respondent's owner.

Findings of Fact

Based on the record in this matter, I make the following findings of fact:

1. On July 9, 2005, Complainant, an African-American female, went to Respondent's store at approximately 10:00 a.m. to purchase some hair products. On the date that Complainant came to Respondent's store, Respondent's store had a normal opening time of 9:00 a.m. and the "open" sign was still on the door.

2. At all times pertinent to the instant Complaint, Respondent's store was in the business of selling beauty products to a clientele that was ninety to ninety-five percent African-American. Moreover, more than half of Respondent's customers were females.

3. At the time Complainant arrived at Respondent's store on July 9, 2005, Junhyun Park, Respondent's owner, and his father-in-law were in the process of closing up the shop due to a telephone call Park had received from his wife indicating that their son had become ill. Park told Complainant that she could not enter the store because he had to leave for a family emergency. Complainant, who did not believe Park's explanation as to why she had to leave, attempted to enter the store, but Park again told her that she had to leave because of a family emergency. Complainant then asked if she could come back to the store, and Park indicated that she could, but that he did not know when the store would reopen. Complainant thereafter left the store, and both Park and his father-in-law closed up the store.

4. After Park and his father-in-law closed up the store, both men went to Park's home and discovered that Park's son was doing better and that things were medically under control. Park then went back to the store and reopened the store.

5. At around 1:00 p.m. on July 9, 2005, Complainant came back to Respondent's store with her 17-year-old son, Duran. After Complainant was looking for about five minutes, Park asked Complainant if there was anything specific that she wanted. Complainant did not answer Park and kept on looking. Shortly thereafter, Complainant asked Park where the hair products were located in his store. Park, who knew Complainant's daughter and believed that Complainant's daughter liked the hair product "Doo Gro," asked Complainant if she was looking

for Doo Gro. Complainant responded: "Did I talk to you? I don't talk to you. I know what I am looking for. Can I just look around?" Park replied "absolutely" and then sat down behind the counter.

6. Approximately two minutes after the verbal exchange identified in Finding of Fact No. 5, Complainant asked Park for a price of an item. Park then told her to look on the top or the side of the bottle for the price. Complainant then replied: "I know how much it is. I got a bachelor's degree, and I'm an educated person...I'm not an uneducated person." At that moment, Park called to another African-American female customer in an attempt to assist her. Complainant then stated; "That's why I don't like this Chinese store; that's why I usually go to Sally's. I don't know why I come up here...I don't like this Chinese store." Park responded to Complainant: "excuse me," and Complainant then stated: "What's wrong with you?" Park then asked Duran what Complainant was looking for in the store, but Duran, who had been looking in the "do-rag" section of the store, did not verbally respond.

7. After Park asked Duran if Complainant was looking for something specific in the store, Complainant said to Park: "You guys are all the same; you never smile at me...why don't you like me?" The record is unclear about the substance of another round of verbal exchanges between Complainant and Park. However, at some point during the exchange, Park told both Complainant and Duran to "get the fuck out of my store;" "I don't want your fucking money;" "get off my property;" "don't come back;" and "get out of my store." When Complainant did not immediately leave the store, Park told Complainant: "If you do not get out of my store, I'm going to call the cops on you;" "I don't want your money;" "I don't want you in my store;" and "get out of here and do not come back." Both Complainant and Duran then left the store.

On July 12, 2005, Park sought medical treatment for his son.

9. On July 14, 2005, Complainant filed a Charge of Discrimination alleging that she was denied the equal enjoyment of services at Respondent's store on account of her race and gender when Park directed her and her son to leave the store's premises.

Conclusions of Law

1. Complainant is an individual claiming to have been aggrieved by a denial of the full and equal enjoyment of the facility and services of a place of public accommodation on the basis of race and sex discrimination prohibited by section 5-102(A) of the Human Rights Act, 775 ILCS 5/5-102(A).

2. Respondent is a place of public accommodation as that term is defined under the Human Rights Act, 775 ILCS 5/5-101(A)(1).

3. Complainant has established a *prima facie* case of unlawful discrimination in the full and equal enjoyment of a place of public accommodation with respect to her first trip to Respondent's store.

4. Respondent has articulated a neutral, non-discriminatory reason for its decision to prevent Complainant from entering its store on her first trip to Respondent's store.

5. Complainant has not established that Respondent's reason for preventing her from entering its store on her first trip was a pretext for either race or sex discrimination.

6. Complainant has failed to establish a *prima facie* case of unlawful race or sex discrimination in the full and equal enjoyment of a place of public accommodation when Respondent's owner ordered her out of his store on her second trip to the store.

Determination

Complainant has failed to establish by a preponderance of the evidence that she was the victim of either race or sex discrimination when Respondent initially denied her entrance into its store and subsequently ordered her out of its store after it had reopened.

Discussion

In a case alleging discrimination based on race and sex, the Commission and the courts have applied a three-step analysis to determine whether there has been a violation of the Human Rights Act. (See, for example, *Canady and Caterpillar, Inc.*, IHRC, ALS No. S-8795, March 17, 1998) and *Loyola University of Chicago v. Illinois Human Rights Commission*, 149 Ill.App.3d 8, 500 N.E.2d 639, 102 Ill.Dec. 746 (1st Dist., 3rd Div. 1986).) Under this approach, a complainant must first establish a *prima facie* case of unlawful discrimination by a preponderance of the evidence. Then, the burden shifts to the respondent to articulate a legitimate non-discriminatory reason for its action taken against the complainant. If the respondent is successful in its articulation, the presumption of unlawful discrimination is no longer present in the case (see, *Texas Department of Community Affairs v. Burdine*, 450 U.S. 248, 101 S.Ct. 1089, 67 L.Ed.2d 207 (1981)), and the complainant is required to prove by a preponderance of the evidence that the respondent's articulated, non-discriminatory reason is a pretext for unlawful discrimination.

While this three-step process has been used primarily in an employment setting, the Commission has approved of its use in resolving cases alleging discriminatory denials in the use and enjoyment of public places of accommodation. (See, for example, *Davis and Ben Schwartz Food Mart*, 23 Ill. HRC Rep. 2 (1986).) Typically, a *prima facie* case of a denial or refusal to afford full and equal enjoyment of a place of public accommodation requires a complainant to show that: (1) she is a member of a protected class; (2) she was denied the full and equal enjoyment of the subject facility; and (3) others not within the protected class were afforded full enjoyment of the facility. See, *Davis*, and *Hornick v. Noyes*, 708 F.2d 321 (7th Cir. 1983).

As to Complainant's first trip to Respondent's store, I find that Complainant has established a *prima* facie case of race and/or sex discrimination since the record shows that: (1)

she is an African-American female; (2) she was denied the full and equal enjoyment of Respondent's beauty supply store when Respondent's owner (Park) precluded her from entering the store; and (3) at the time Complainant attempted to enter the store there was an "open" sign on the door indicating that the public (including males and individuals from other races) could enter the facility. However, Park testified at the public hearing that he was attempting to close the store at the time Complainant initially appeared at the store due to a perceived family medical emergency. On its face, this explanation provides me with a race and sex-neutral reason for why Complainant was not allowed to enter Respondent's store, and Complainant has not seriously argued that this articulation, if believable, would not be sufficient to satisfy Respondent's burden of production under *Burdine.* Thus, the only real question remaining in the case is whether Complainant has shown by a preponderance of the evidence that Respondent's articulation is a pretext for race and/or sex discrimination with respect to affording her full and equal access to Respondent's store.

In this respect, I find that Complainant has failed in her burden of showing that a perceived medical emergency was not the true reason for Park denying her access to the store. Specifically, Complainant acknowledged that Park had told her that he had to take care of some business that had something to do with his wife, and Respondent introduced into evidence that Park's son was taken to a physician three days after the incident in question, but prior to the date that Complainant had filed her Charge of Discrimination. As such, I cannot find that Park's testimony that he wished to close the store to attend to the perceived medical needs of his son was a manufactured reason to disguise a racial or sexist animosity on his part. Moreover, while Complainant testified that she did not believe Park when he indicated during her initial visit that he had to close the store, Complainant failed to present any evidence, such as the existence of other customers in the store at the time she attempted to enter the store, which would have supported her disbelief of Park's claim. Indeed, Complainant's acknowledgement that Park had

told her that she could return to the store at some point in the future (Tr. at pg. 10) casts doubt on her overall claim that Park did not want her in the store at all or that she was being excluded from the store on the basis of her race and/or gender. Therefore, in the absence of such pretext evidence, I find that Complainant has not shown that the true reason she was initially denied entry into Respondent's store was because of her race and/or gender.

The result is the same as to Complainant's second trip to Respondent's store, although the means to that result is somewhat different. Specifically, as to the issue of Complainant's *prima facie* case of discrimination, I note that Complainant has satisfied the first two elements of a *prima facie* case of discrimination in that Complainant demonstrated that she was a member of two protected classes (i.e., an African-American and a female), and that she was denied the full and equal enjoyment of Respondent's store when Park ordered her to leave the store. However, Complainant has failed to present evidence that similarly situated customers outside her protected classifications were treated more favorably, even if one could credit Complainant's testimony that she was treated rudely in Respondent's store on her second visit. In this regard, the record shows that Park was providing service to another African-American female customer at or near the time that he ordered Complainant and her son out of the store, and the fact that Park ordered Complainant's son out of the store cuts against any claim that Park's actions were based on Complainant's gender. Moreover, the unrebutted fact that the store's customer base was ninety to ninety-five percent African American, as well as mostly female, goes a long way towards a finding that Complainant's race or gender had nothing to do with Park's actions.

True enough, the Commission in *Hawley and Rosewood Care Center of Peoria*, IHRC, ALS No. 7915(S), December 19, 1997 found the existence of racial discrimination even though the discharged complainant shared the same race as her replacement, as well as a vast majority of her co-workers. However, the complainant in *Hawley* was able to produce other evidence of racial animosity on the part of her supervisor, i.e., a racial statement at the time of

complainant's termination, to establish that race was a motivating factor for the adverse act. In contrast, our Complainant was unable to produce any evidence that Park demonstrated either a racist or sexist animosity towards her, and the record otherwise demonstrates that Park apparently treated other females and African-Americans in a favorable fashion by allowing them the full and equal enjoyment of his store. Indeed, the record shows that Park was attempting to attend to the needs of another African-American female at the time he ordered Complainant and her son out of his store. In this regard, I can only find that his decision to kick Complainant and her son out of his store was not the result of either Complainant's race or gender, but rather was the result of Complainant's derogatory remarks directed towards him.

Recommendation

For all of the above reasons, it is recommended that the instant Complaint and underlying Charge of Discrimination of Rosalind R. Gibbs be dismissed with prejudice.

HUMAN RIGHTS COMMISSION

BY: _____
MICHAEL R. ROBINSON
Administrative Law Judge
Administrative Law Section

ENTERED THE 8TH DAY OF JANUARY, 2010